

Janice B. Grubin
Partner

January 18, 2022

VIA ELECTRONIC MAIL & ECF FILING

rdd.chambers@nysb.uscourts.gov

The Honorable Robert D. Drain
United States Bankruptcy Judge
United States Bankruptcy Court
300 Quarropas Street, Room 147
White Plains, New York 10601

Re: In re Vernon 4540 Realty, LLC, Chapter 11 Case No. 20-22919 (RDD)
(the “Case”); CSC 4540, LLC, et al. v. Vernon 4540 Realty, LLC et al.,
Adv. Pro. No. 20-07020 (RDD) (the “AP”)

Dear Judge Drain:

As Your Honor is aware, we serve as counsel to Angela M. Orlandella, the Examiner appointed in the Case by Order entered March 31, 2021 [Case Docket No. 35].

We write to apprise the Court of Brent Carrier’s noncompliance with the Order Directing Brent Carrier to Execute and Submit the Refund Authorization to the New York State Department of Taxation and Finance for Deposit Into an Escrow Account Held by Examiner’s Counsel Pending Further Court Order (the “Carrier Order”) [Case Docket No. 126 and AP Docket No. 137] and to request assistance in the Order’s implementation.

In the Carrier Order, Your Honor directed Mr. Carrier to

execute the Refund Authorization annexed to the Examiner Omnibus Reply as Exhibit A, and submit said authorization to the DTF for processing of the Tax Refund, in each case within three (3) days of the entry of this Order, with a copy emailed on such date to Examiner’s counsel, Janice Grubin at jgrubin@barclaydamon.com. Mr. Carrier’s failure to comply with this decretal paragraph shall subject him to sanctions, including, without limitation, a coercive sanction of \$1,000 a day until such actions are taken.

The Court further directed the undersigned to email a copy of the Carrier Order to Mr. Carrier “on or before the close of business on January 6, 2022....” Finally, the Carrier Order

provided that “the Court shall retain jurisdiction over all issues arising from or relating to an interpretation or implementation of this Order.”

The undersigned emailed Mr. Carrier a copy of the Carrier Order on January 5, 2022. (See attached Certificate of Service [Case Docket No. 127 and AP Docket No. 138]. The undersigned also emailed Mr. Carrier a copy of the Refund Authorization on January 6, 2022, with the dates changed from December to January and the insertion of the phrase “Subject to final audit determination” on pages one and two. (Copies of the Carrier Order and revised Refund Authorization are also attached for the Court’s convenience.)

Mr. Carrier failed to execute the Refund Authorization within the allotted three days and, on January 11, 2022, I consulted with Ms. Schwartz of the Office of the United States Trustee. Thereafter, on the same day, I called and emailed Mr. Carrier, inquiring as to the status of the executed Refund Authorization, and stating that I would like to speak to him prior to reporting his noncompliance to the Court. Mr. Carrier never responded to my inquiries.

We have not received the executed Refund Authorization from Mr. Carrier, and today we confirmed with the DTF that it, likewise, has not received an executed Refund Authorization from Mr. Carrier.

We request the Court’s assistance in this matter.

Thank you.

Respectfully,

/s/Janice B. Grubin

Janice B. Grubin

JBG:kb

Enclosures

cc via email, w/enc.: Andrea B. Schwartz, Esq.
Ms. Angela M. Orlandella
David G. Burch, Jr., Esq.
Mr. Brent Carrier
H. Bruce Bronson, Jr., Esq.
Bruce Weiner, Esq.
Deborah Liebman, Esq.
David Demeter, Esq.
Jeffrey Cymbler, Esq.
Joseph Moldovan, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

VERNON 4540 REALTY, LLC,

Debtor.

Chapter 11

Case No. 20-22919 (rdd)

CSC 4540, LLC, 45-50 VERNON LP, JSMB
4540 LLC, and JSMB 4540 MM LLC,

Plaintiffs,

Adv. Proc. No. 20-07020 (rdd)

v.

VERNON 4540 REALTY, LLC and BRENT
CARRIER,

Defendants.

**ORDER DIRECTING BRENT CARRIER TO EXECUTE
AND SUBMIT THE REFUND AUTHORIZATION TO
THE NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE FOR DEPOSIT INTO AN
ESCROW ACCOUNT HELD BY EXAMINER'S
COUNSEL PENDING FURTHER COURT ORDER**

Upon the Report¹ of Angela M. Orlandella dated October 28, 2021 [Main Case Docket No. 100-103 and AP#1 Docket No. 118-122] filed pursuant to the Order Granting Plaintiffs' Motion for Summary Judgment and Directing Appointment of Examiner with Powers Pursuant to 11 U.S.C. § 1104(c) dated March 29, 2021 [AP#1 Docket No. 60]; and upon the Order Denying Plaintiffs' Motion for Contempt and Sanctions Against Defendant Brent Carrier and Directing Compliance With the Court's Order Granting Plaintiffs' Motion for Summary Judgment and Directing Appointment of an Examiner with Powers

¹ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Report [Main Case Docket No. 100 and AP#1 Docket No. 118].

Pursuant to 11 U.S.C. § 1104(c) dated May 4, 2021 [AP#1 Docket No. 83]; and upon the status conference held on November 4, 2021; and upon the Response of MGRU LLC to the Examiner's Report dated November 17, 2021 ("the MGRU Response") [Main Case Docket No. 108]; and upon the Defendant Brent Carrier's Response to Examiner Report and November 12, 2021 Demand for Execution of Refund Authorization dated November 18, 2021 (the "Carrier Response") [AP#1 Docket No. 126]; and upon the Examiner's Omnibus Reply to the MGRU and Carrier Responses (the "Examiner Omnibus Reply") [Main Case Docket No. 111 and AP#1 Docket No. 129]; and upon the Affirmation in Response to Examiner's Reply to Response of MGRU LLC to the Examiner's Report (the "MGRU Affirmation," and, together with the MGRU Response, the "MGRU Responses") [Main Case Docket No. 123]; and the service and notice of the Examiner Omnibus Reply having been due and sufficient, and no further notice of the Examiner's request for the relief granted in this Order being required; and the Court having jurisdiction to consider the Report, the Carrier Response, the MGRU Responses, and the Omnibus Reply and the relief requested therein and to determine same as a core proceeding, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having held a hearing on the Report and the Examiner's request for the relief granted herein on December 17, 2021 (the "Hearing"); and upon the record of the Hearing and the status conference on November 4, 2021 and all of the proceedings held in this adversary proceeding and the bankruptcy case; and after due deliberation and for the reasons stated by the Court at the Hearing, good and sufficient cause appearing, it is hereby

ORDERED that the Carrier Response is overruled; and it is further

ORDERED that the MGRU Responses remain unaffected by this Order insofar as they do not impact the calculation and allocation of the Tax Refund from which funds Debtor Vernon 4540 Realty LLC's creditors holding allowed claims will be paid; and it is further

ORDERED that Defendant Brent Carrier is directed to execute the Refund Authorization annexed to the Examiner Omnibus Reply as Exhibit A, and submit said authorization to the DTF for processing of the Tax Refund, in each case within three (3) days of the entry of this Order, with a copy emailed on such date to Examiner's counsel, Janice Grubin at jgrubin@barclaydamon.com. Mr. Carrier's failure to comply with this decretal paragraph shall subject him to sanctions, including, without limitation, a coercive sanction of \$1,000 a day until such actions are taken; and it is further

ORDERED that counsel for the Examiner shall email a copy of this Order to Defendant Brent Carrier on or before the close of business on January 6, 2022; and it is further

ORDERED that upon receipt of the Tax Refund, the Examiner shall deposit the funds into an interest-bearing account held by Barclay Damon LLP for the benefit of Debtor's estate until further Order of this Court and will file on a monthly basis the deposit statement; and it is further

ORDERED, that the Court shall retain jurisdiction over all issues arising from or relating to an interpretation or implementation of this Order.

Dated: January 5, 2022
White Plains, New York

/s/Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

*Brent Carrier
45 Carleon Avenue
Larchmont, NY 10538
brentlcarrier@yahoo.com*

VIA Overnight Delivery

January __, 2022

Ms. Deborah Liebman
Deputy Counsel
New York State Department of Taxation & Finance
W.A. Harriman Campus, Building 9
Albany, New York 12227

Re: Refunds due through my membership interest in Vernon 4540 Realty, LLC
Tax Years 2016 - 2019

Dear Ms. Liebman,

The Examiner Report issued by Angela M. Orlandella dated as of October 28, 2021 (the “Report”) stated that the Examiner and the Income/Franchise Desk Audit Bureau for the New York State Department of Taxation & Finance (the “DTF”) are in agreement with the determined amount of refundable Brownfield Tax Credits earned directly by Vernon 4540 Realty, LLC (the “Debtor”), or allocated to Debtor through its membership interest in CSC 4540, LLC, for tax years 2016 – 2019 (the “Debtor Brownfield Tax Credits”). Subject to final audit determination, the Debtor Brownfield Tax Credits and associated Tax Refund are set forth on the Vernon 4540 Realty, LLC/Carrier Revised Audit working schedules prepared and distributed by DTF, included as Exhibit 90 to the Examiner Report (the “Audit Schedules”), and are summarized as follows:

Tax Year	Debtor’s Estate Brownfield Tax Credits	Debtor’s Estate Tax Refund
2016	\$1,945,556	(\$1,945,556)
2017	21,389	23,411
2018	7,620	(7,620)
2019	2,719	(2,719)
Total	\$1,979,333	(\$1,932,484)

As required by the Report, I am providing DTF with this written authorization (the “Refund Authorization”) and directing DTF to name the payee as **Barclay Damon LLP as Escrow Agent** for any check or checks due to me for tax years 2016 – 2019 comprising the Tax Refund.

Further, I direct that my Tax Refund checks for the above listed tax years be mailed directly to:

Ms. Deborah Liebman

January __, 2022

Page 2

Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202
Attn: Angela M. Orlandella, Examiner

I understand that, pursuant to the Summary Judgment Order, my Tax Refund, whether one or separate checks for each of the tax years listed above, will be deposited into an interest-bearing escrow account held by Barclay Damon LLP for the benefit of Debtor's estate and will not be released without further order of the Court.

I further ask that you provide confirmation of your acceptance of this Refund Authorization directly to me, and to the Examiner and her counsel, either by electronic correspondence or by United States mail, within 5 days of receipt.

To Examiner:

Angela M. Orlandella
c/o Barclay Damon LLP
125 East Jefferson Street
Syracuse, New York 13202
(315) 425-2874
aorlandella@barclaydamon.com

with a copy to Examiner's Counsel:

Janice B. Grubin
Barclay Damon LLP
1270 Avenue of the Americas, Suite 501
New York, New York 10020
(212) 784-5800
jgrubin@barclaydamon.com

This Refund Authorization is provided in compliance with the Report, and is specific to the Tax Refund set forth on the Audit Schedules, subject to final audit determination.

Ms. Deborah Liebman

January __, 2022

Page 3

This Refund Authorization is not to be construed as a waiver of any of my rights as provided under the New York State Tax Law to contest DTF's calculation of the Brownfield Tax Credits through the New York State Bureau of Conciliation and Mediation Services or in the New York State Division of Tax Appeals.

Authorized by:

Brent Carrier
Individually

Brent Carrier, as Managing Member
of Vernon 4540 Realty, LLC

STATE OF NEW YORK)

COUNTY OF) ss.:

On the ____ day of January, in the year 2022, before me, personally appeared Brent Carrier, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same, and that by his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

COUNTY OF) ss.:

On the ____ day of January, in the year 2022, before me, personally appeared Brent Carrier, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Managing Member of Vernon 4540 Realty, LLC, and that by his signature on the instrument, the entity upon behalf of which the individual acted, executed the instrument.

Notary Public

BARCLAY DAMON LLP

Janice B. Grubin
1270 Avenue of the Americas, Suite 501
New York, NY 1020
Telephone: (212) 784-5800
jgrubin@barclaydamon.com

Counsel to Angela M. Orlandella, Examiner

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

VERNON 4540 REALTY, LLC,

Debtor.

CSC 4540, LLC, 45-50 VERNON LP, JSMB 4540
LLC, and JSMB 4540 MM LLC,

Plaintiffs,

v.

VERNON 4540 REALTY, LLC and BRENT
CARRIER,

Defendants.

Chapter 11

Case No. 20-22919 (rdd)

Adv. Proc. No. 20-07020 (rdd)

CERTIFICATE OF SERVICE

I, Janice B. Grubin, hereby certify that, on the 5th day of January, 2022 at 4:28 p.m. Eastern Standard Time, I served, via electronic mail, a true and correct copy of the *Order Directing Brent Carrier to Execute and Submit the Refund Authorization to the New York State Department of Taxation and Finance for Deposit Into an Escrow Account Held by Examiner's Counsel Pending Further Court Order* dated January 5, 2022 [Docket No. 137] upon Mr. Brent Carrier and parties in interest by transmitting a copy of same to the following persons and email addresses listed below:

Brent Carrier
Brent Carrier

brentlcarrier@yahoo.com
carrier@alum.mit.edu

Andrea B. Schwartz	andrea.b.schwartz@usdoj.gov
H. Bruce Bronson, Jr.	ecf@bronsonlaw.net
H. Bruce Bronson, Jr.	hbronson@bronsonlaw.net
Joseph T. Moldovan	jmoldovan@morrisoncohen.com
David J. Koslowski	dkozlowski@morrisoncohen.com
Deborah Liebman	Deborah.Liebman@tax.ny.gov
David DeMeter	David.Demeter@tax.ny.gov
Jeffrey Cymbler	Jeffrey.cymbler@tax.ny.gov
Bruce Weiner	bweiner@nybankruptcy.net
Angela M. Orlandella	aorlandella@barclaydamon.com
David G. Burch, Jr.	dburch@barclaydamon.com

Dated: January 6, 2022
New York, New York

/s/Janice B. Grubin
Janice B. Grubin
Barclay Damon LLP
1270 Avenue of the Americas, Suite 501
New York, NY 10020
Telephone: (212) 784-5800
jgrubin@barclaydamon.com

Counsel to Angela M. Orlandella, Examiner